



STATE OF MICHIGAN
COURT OF APPEALS
October 6, 2006

WILLIAM C. WHITBECK
CHIEF JUDGE

925 W. OTTAWA STREET
P.O. BOX 30022
LANSING, MICHIGAN 48909-7522
TELEPHONE (517) 373-3834
FAX (517) 373-3837
E-MAIL wwhitbeck@courts.mi.gov

The Honorable Clifford W. Taylor
Chief Justice, Michigan Supreme Court
Michigan Hall of Justice
925 W. Ottawa Street
P.O. Box 30052
Lansing, MI 48909

Dear Chief Justice Taylor:

As you know, on October 5, 2004, the Supreme Court issued Administrative Order 2004-5. This AO authorized the Court of Appeals to conduct a two-year experiment, commencing January 1, 2005, with an expedited track for appeals from trial court orders granting or denying summary disposition; this experiment is commonly known as the *SD Track* and its goal is to decide summary disposition appeals within 180 days of the filing of such appeals. The AO also directed the Case Management Work Group to provide written updates on the experiment and states that the Supreme Court "will evaluate expedited processing of summary disposition appeals to determine whether the procedure will be discontinued, changed, or continued" at the end of the two-year pilot period.

Over the last several months, the Case Management Work Group has met for the purpose of considering whether to recommend the continuance of the *SD Track* experiment. As the attached report indicates, we recommend its continuance for another year but with certain changes designed to decrease the number and complexity of the cases that go on the *SD track*. To that end, we have also prepared and attached a draft amended AO that would implement the changes that we recommend.

As the report indicates, the *SD Track* has been highly successful in a number of ways. It has proven to be very popular with litigants and their attorneys, transcripts and briefs are timely filed in most cases, motions to remove are relatively rare, and the Court has liberally granted motions to extend time for briefing. Particularly with the first amended AO, which simplified the presentation and processing of *SD Track* cases during record production and briefing beginning January 1, 2006, the *SD Track* has proven to be reasonably easy to administer. Further, its popularity among litigants is a most useful illustration of the value of prompt resolution of appeals.

To a certain extent, however, the *SD Track* has become a victim of its own success. First, its very popularity among litigants has meant that it has been utilized with greater

frequency than the Work Group originally anticipated. Secondly, many cases on the SD Track have proven to be more complex than the Work Group contemplated. As a result, with no increase in staffing resources at the Court and with unanticipated increases in both the number and the complexity of SD Track filings, the timeline for the issuance of dispositive orders or opinions has lengthened out considerably. Expressed in the simplest fashion, the Court is now reaching the goal of dispositions on the SD Track within 180 days of filing in only 26.5% of the SD Track cases.

The Work Group considered a number of different alternatives with respect to this situation, including the termination of the experiment at the end of the two-year period. Ultimately, however, we unanimously determined to recommend the extension of experiment for an additional year with the following changes:

- Identify and publish the characteristics and attributes of typical cases in the one-to-four-day evaluation range so that practitioners will know with some certainty what types of cases are appropriate for the SD Track.
- Do not charge a fee for motions to remove cases from the SD Track.
- Administratively remove inappropriate cases from the SD Track.

We believe that these changes will reduce both the number and the complexity of cases on the SD Track. We anticipate that this will allow the Court to meet the 180-day goal contained in the AO and, thereby, to contribute to the attainment of the Court's overall goal of deciding 95% of its cases within 18 months of filing. In this regard, I note that, as the Court's next Delay Reduction Report will spell out in greater detail, the Court has now reduced the average time for disposition of an opinion case from 653 days in 2001 to 406 days in the third quarter of 2006.

I would be remiss if I did not also mention that the Court's staffing situation has materially contributed to the lengthening out of the time to decide SD Track cases. If the Court were staffed at appropriate levels, it could process SD Track appeals within the 180 timeline contained in the original AO. Indeed, as the attached report notes, the processing stage at the Court that has had the largest increase in time is the *Warehouse* stage. As you know, the *Warehouse* exists simply because we do not have sufficient staff in our Research Division to handle cases that are ready for analysis and preparation of research reports immediately after such cases complete the *Intake* stage.

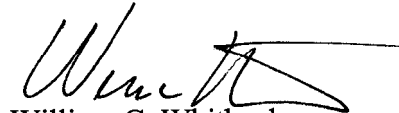
Several years ago, there was almost universal recognition of the need to rectify this situation. As part of an overall package of fee increase bills originated by the Supreme Court, supported by the Executive Branch, enacted by the Legislature, and signed by the Governor, the Court received approximately \$525,000 more in revenues in FY 2004 from entry and motion fees than it received in FY 2003. These funds allowed the Court to increase its Research Division staff in FY 2004 and to continue the higher staffing levels in FY 2005. The budgets for subsequent fiscal years, however, have not fully provided for these increased staffing levels and the existence of the *Warehouse* remains a pressing problem at the Court, not only with respect to the SD Track but also with respect to delay reduction generally. The Court is in the process of

preparing its proposed budget request for FY 2008 and I anticipate that we will again attempt to rectify this situation.

With respect to the attached proposed amended AO, if the Supreme Court approves the proposed amendments, we ask that they be given an effective date of January 1, 2007, *at the latest* so that we can develop as much experience as possible under the amended order before the recommended expiration of the test period in December 2007. We will publicize the changes with every resource at our disposal, including individual mailings to all parties in cases filed on or after January 1, 2007.

As always, I will be happy to provide your Court with whatever information or assistance it requests in considering and implementing these proposed amendments.

Sincerely,



William C. Whitbeck
Chief Judge

WCW/dp

Enclosures

cc: Justice Michael F. Cavanagh
Justice Elizabeth A. Weaver
Justice Marilyn Kelly
Justice Maura D. Corrigan
Justice Robert P. Young, Jr.
Justice Stephen J. Markman
Case Management Work Group:
Justice Robert Young Jr.
Judge Michael Talbot
Ms. Denise Devine
Mr. Terence Flanagan
Mr. Donald Fulkerson
Mr. Carl Gromek
Mr. John Jacobs
Judge Peter Maceroni
Mr. Timothy McMorro
Ms. Sandra Mengel
Mr. Douglas Messing
Ms. Mary Massaron Ross
Mr. Larry Royster
Ms. Evelyn Tombers
Ms. Hannah Watson